

Risk Reduction Through Voluntary Cleanups

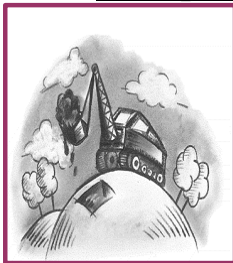
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Voluntary Party Liability Exemption process



- Overview VPLE
- Risk Reduction Tool
- Insurance program for VPLE sites


Risks Associated with Brownfields Redevelopment?

- ❁ How much will it cost to conduct cleanup?
- ❁ Will the government require more cleanup?
- ❁ Can I obtain financing and sell the property?
- ❁ Was all contamination found?





Voluntary Party Liability Exemption



*State voluntary cleanup process
can address these risks*

Environmental Liability in Wisconsin

- Hazardous Substance Spill Law (s. 292.11(3)) allows DNR to hold a party responsible for environmental contamination if they:

- cause a discharge
- possess a discharge
- control a discharge



Voluntary Party Liability Exemption (VPLE) (292.15)

- Voluntarily investigate and clean up an entire property
- No limits on eligibility:
 - local government
 - new purchaser
 - responsible party
 - bank
- DNR project management and technical review throughout process

Voluntary Party Liability Exemption (VPLE) cont.

THE EXEMPTION

- Certificate of Completion
- Protections from future liability
- Exemption applies to current and future property owner
- Exemption applies to all known and unknown areas of contamination on entire property

**Voluntary Party Liability
Exemption (VPLE) cont.**

THE EXEMPTION

Exemption applies even if:

- The contamination is found to be more extensive than anticipated; i.e. something was missed during investigation
- Cleanup action fails to fully restore environment
- Environmental standards change

**Voluntary Party Liability
Exemption (VPLE) cont.**

- DNR reviews site assessment (Phase 1 & 2) of entire property
- Follows NR 700 - State's comprehensive cleanup regulations
- Cleanup standards and options same as standard closure



**Voluntary Party Liability
Exemption (VPLE) cont.**

Status Update:

- Began in 1996
- Eligibility Expanded in 1999 to include RPs
- 32 Certificates have been awarded
- Around 125 sites in process
- Current Fee = \$75 per hour
- Can take 6 months to several years

**Voluntary Party Liability
Exemption (VPLE) cont.**

If special conditions are met, parties can get liability exemptions for:

- Properties with contamination from off-site
- Partial cleanups

Benefits of VPLE

- Control risk associated with cleanup and property transaction
- Assurance that state or federal gov. will not require any additional action
- Provides comfort to lender, buyers, lessees, etc.
- Objective third party review of site assessment & cleanup

VPLE Insurance



State insurance program for VPLE sites

- For sites closed using natural attenuation as remedy for groundwater
- Statute (292.15(2)(ae)) allows DNR to issue COC if voluntary party obtains insurance to cover the cost if natural attenuation fails
- Individually underwritten site specific policies would have been too expensive and complicated

VPLE Insurance for NA Sites (cont.)

Structure of program:

- Voluntary party conducts investigation and cleanup
- Demonstration that NA is effective
- DNR project manager must approve site investigation and closure request
- Voluntary Party pays insurance fee and submits short application to receive liability exemption
- State master insurance policy for all sites

VPLE Insurance Program for NA Sites (cont.)

MASTER INSURANCE POLICY

Program development

- * Department of Administration - Risk Management Program
- * Used State's Insurance Broker for Assistance
- * Solicited Proposals from Leading Environmental Insurers

VPLE Insurance Program for NA Sites (cont.)

MASTER INSURANCE POLICY

- * Wisconsin DNR and State are the only insureds on the policy
- * Voluntary Party pays the per-site premium
- * Simple fee schedule based on size and past use
- * For cleanup cost of on-site and off-site of pollution that will naturally attenuate

VPLE Insurance Program for NA
Sites (cont.)

MASTER INSURANCE POLICY

- * The Insurer is an AIG Company
- * Variation of Pollution Legal Liability Select Policy
- * 10 year policy term
- * \$1 million per site loss and \$10 million aggregate
- * Variable Deductible \$5K to \$25K

VPLE Insurance Program for NA
Sites (cont.)

MASTER INSURANCE POLICY – current fee schedule

| PREVIOUS USE OF PROPERTY | TOTAL ACREAGE OF PROPERTY | |
|--------------------------|---------------------------|-------------------|
| | 0 to 4.99 acres | 5 acres and above |
| Residential | \$5,039 | \$5,987 |
| Agricultural | \$9,047 | \$10,758 |
| Commercial | \$9,614 | \$11,397 |
| Light Industrial | \$11,755 | \$13,927 |
| Heavy Industrial | \$15,428 | \$18,293 |

VPLE Insurance - Example

Washington Square Mall



- Germantown, Wisconsin
- Dilapidated, mostly vacant strip mall
- Contained Dry Cleaning Facility
- PCE Contamination in Soil and Groundwater



VPLE Insurance - Example
(cont.)

Washington Square Mall

- Contaminated Soil Removed
- Carbon Injection System Installed to Enhance PCE Breakdown in Groundwater
- Significant reductions in contamination
- Natural Attenuation will complete cleanup
- Paid Insurance Fees and obtained Certificate of Completion



Benefits of VP&E Insurance

- Clear exemption from liability; no need for private "reopener" insurance
 - Need to cover third-party exposures may still exist
- Cost effective remedy/ protective of environment
- Streamlined process; sites are not individually underwritten
- Known low per-site cost (< \$ than closure w/ "reopener" insurance)

Combine with Other Tools

- VP&E and VP&E insurance is one tool to address risk
 - State approval & statutory exemptions lower risk
- Combine liability exemption with:
- ✓ private insurance; third party, secured creditor, etc.
 - ✓ indemnification agreements
